

Office of the Clerk
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT
95 Seventh Street Post Office Box 193939
San Francisco, California 94119-3939
(415) 556-9800
Cathy A. Catterson Clerk of Court

August 31, 2001

**Notice and Opportunity for Comment on
Proposed Amendments to the Circuit Rules**

Comments are invited on the following proposed amendment to Circuit Rule 46, Attorneys. Comments should be submitted to Cathy A. Catterson, Clerk of Court/Circuit Court Executive, no later than September 28, 2001.

CIRCUIT RULE 46-2
Attorney Suspension, Disbarment, or Other Discipline

(1) Conduct Subject to Discipline. This Court may impose discipline on any attorney practicing before this Court who engages in conduct violating applicable [rules of professional conduct] [Model Rules of Professional Conduct]¹, or who fails to comply with rules or orders of this Court. The discipline may consist of disbarment, suspension, reprimand, or any other action that the Court deems appropriate and just.

(2) Initiation of Disciplinary Proceedings Based on Conduct Before This Court. The Chief Judge or a panel of judges may initiate disciplinary proceedings based on conduct before this Court by issuing an order to show cause under this rule that identifies the basis for imposing discipline.

(3) Reciprocal Discipline. An attorney who practices before this Court shall provide the Clerk of this Court with a copy of any order or other official notification that the attorney has been subjected to suspension or disbarment in another jurisdiction. When this Court learns that a member of the bar of this Court has been disbarred or suspended from the practice of law by any court or other competent authority or resigns during the pendency of disciplinary proceedings, the Clerk shall issue an order to show cause why the attorney should not be suspended or disbarred from practice in this Court.

(4) Response. An attorney against whom an order to show cause is issued shall have twenty-eight (28) days from the date of the order in which to file a response. The attorney may include in the response a request for a hearing pursuant to Federal Rule of Appellate Procedure 46(c). The failure to request a hearing will be deemed a waiver of any right to a hearing. The failure to file a timely response may result in the imposition of discipline without further notice.

(5) Hearings on Disciplinary Charges. If requested, the court will hold a hearing on the disciplinary charges, at which the attorney may show cause why discipline is not warranted. The court may refer the matter to an appellate commissioner or other judicial officer to conduct the hearing. The attorney may be represented by counsel at the hearing. In appropriate cases, the court may appoint an attorney to prosecute charges of misconduct.

(6) Report and Recommendation. If the matter is referred to an appellate commissioner or other judicial officer, that judicial officer shall prepare a report and recommendation. The report and recommendation shall be served on the attorney, and the attorney shall have twenty-one (21) days from the date of the order within which to file a response. The report and recommendation together with any response shall be presented to a three-judge panel.

(7) Final Disciplinary Action. The final order in a disciplinary proceeding shall be issued by a three-judge panel.

(8) Reinstatement. A suspended or disbarred attorney may file a petition for reinstatement with the Clerk. The petition shall contain a concise statement of the circumstances of the disciplinary proceedings, the discipline imposed by this Court, and the grounds that justify reinstatement of the attorney.

(9) Monetary Sanctions. Nothing in this rule limits the Court's power to impose monetary sanctions as authorized under other existing authority.

¹ Please specify which of the two proposed bracketed versions you prefer.

Purpose of Rule

To set forth the Court's rules and procedures governing attorney discipline.